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FILED

08 DEC -5 PM 12: 26

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIARW
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8 Attorneys for the Plaintiff
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

14 Erica Welker 15 Plaintiff, 16 v. 17 Law Office of Daniel J. Horwitz 18 Defendant. 19	14 Case Number: 15 08 CV 2259 MMA WMC 16 Complaint For Damages 17 Jury Trial Demanded 18
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INTRODUCTION

- 21
 22 1. The United States Congress has found abundant evidence of the use of
 23 abusive, deceptive, and unfair debt collection practices by many debt
 24 collectors, and has determined that abusive debt collection practices
 25 contribute to the number of personal bankruptcies, to marital instability, to the
 26 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
 27 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
 28 “FDCPA”), to eliminate abusive debt collection practices by debt collectors,

- 1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.
- 4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.
- 13 3. Erica Welker, (Plaintiff), through Plaintiff's attorneys, brings this action to
14 challenge the actions of Law Office of Daniel J. Horwitz, ("Defendant"), with
15 regard to attempts by Defendant to unlawfully and abusively collect a debt
16 allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
- 17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.
- 20 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
21 were knowing and intentional, and that Defendant did not maintain
22 procedures reasonably adapted to avoid any such violation.

23 **JURISDICTION AND VENUE**

- 24 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
25 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
- 26 7. This action arises out of Defendant's violations of the Fair Debt Collection
27 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
28

Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 (“RFDCPA”).

8. Because Defendant does business within the State of California, personal jurisdiction is established.
 9. Venue is proper pursuant to 28 U.S.C. § 1391(c).

PARTIES

10. Plaintiff is a natural person who resides in the City of Carlsbad, County of San Diego, State of California.
 11. Defendant is located in the City of San Diego, the County of San Diego, and the State of California.
 12. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
 13. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).
 14. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).
 15. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).
 16. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer

1 credit transaction. As such, this action arises out of a consumer debt and
2 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

3 **FACTUAL ALLEGATIONS**

- 4 17. At all times relevant to this matter, Plaintiff was an individual residing within
5 the State of California.
- 6 18. At all times relevant, Defendant conducted business within the State of
7 California.
- 8 19. Sometime before October 2, 2008, Plaintiff is alleged to have incurred certain
9 financial obligations.
- 10 20. These financial obligations were primarily for personal, family or household
11 purposes and are therefore a "debt" as that term is defined by 15 U.S.C.
12 §1692a(5).
- 13 21. These alleged obligations were money, property, or their equivalent, which is
14 due or owing, or alleged to be due or owing, from a natural person to another
15 person and are therefore a "debt" as that term is defined by California Civil
16 Code §1788.2(d), and a "consumer debt" as that term is defined by California
17 Civil Code §1788.2(f).
- 18 22. Sometime thereafter, but before October 2, 2008, Plaintiff allegedly fell
19 behind in the payments allegedly owed on the alleged debt. Plaintiff currently
20 takes no position as to the validity of this alleged debt.
- 21 23. Subsequently, but before October 2, 2008, the alleged debt was assigned,
22 placed, or otherwise transferred, to Defendant for collection.
- 23 24. On or about October 2, 2008, Defendant mailed a dunning letter to Plaintiff.
24 A few days later, Plaintiff received that letter.
- 25 25. This communication to Plaintiff was a "communication" as that term is
26 defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent
27 with 15 U.S.C. § 1692g(a).

- 1 26. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
2 defines that phrase, and an “initial communication” consistent with Cal. Civ.
3 Code § 1812.700(b).
- 4 27. In this letter Defendant Horwitz misrepresented the notice required by 15
5 U.S.C. § 1692g(4), because Defendant Horwitz stated that Plaintiff could
6 dispute the debt in a manner other than “in writing,” as the FDCPA requires.
7 Under the FDCPA, when consumers dispute debts in a manner other than in
8 writing, they lose valuable consumer protections.
- 9 28. In this letter Defendant Horwitz failed to include the amount of the debt as
10 required by 15 U.S.C. § 1692g(1) because Defendant Horwitz demanded the
11 principal amount and some unknown “interest,” and “court costs.”
- 12 29. Consequently, Defendant Horwitz failed within five days after its initial
13 communication with Plaintiff, to provide written notification containing a
14 statement that unless Plaintiff, within thirty days after receipt of that notice,
15 disputed the validity of the debt, or any portion thereof, Defendant Horwitz
16 would assume the debt was valid, or failed within five days after its initial
17 communication with Plaintiff to provide a written notice containing a
18 statement that if Plaintiff notified Defendant Horwitz in writing, within the
19 thirty-day period that the debt, or any portion thereof, was disputed,
20 Defendant Horwitz would obtain verification of the debt or a copy of a
21 judgment against Plaintiff and a copy of such verification or judgment would
22 be mailed to Plaintiff by Defendant Horwitz and that Defendant Horwitz
23 would provide Plaintiff with the name and address of the original creditor.
24 This omission by Defendant Horwitz violated 15 U.S.C. § 1692g.
- 25 30. Because this omission violated the language in 15 U.S.C. § 1692g, Defendant
26 Horwitz also violated Cal. Civ. Code § 1788.17 as it incorporates 15 U.S.C. §
27 1692g.
- 28

31. Defendant Horwitz, a third party debt collector, failed, in the first written notice initially addressed to Plaintiff's California address in connection with collecting the alleged debt by Defendant, pursuant to Cal. Civ. Code § 1812.700, and in the manner prescribed by Cal. Civ. Code § 1812.700(b) and Cal. Civ. Code § 1812.701(b), to provide a notice to Plaintiff as prescribed in Cal. Civ. Code § 1812.700(a). Consequently, pursuant to Cal. Civ. Code § 1812.702, this omission by Defendant Horwitz violated the RFDCPA.

32. Through this conduct, Defendant was collecting an amount (including any interest, fee, charge, or expense incidental to the principal obligation) when such amount was not expressly authorized by the agreement creating the debt or permitted by law. Consequently, Defendant violated 15 U.S.C. § 1692f(1).

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 ET SEQ.

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
34. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
35. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

36. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
 37. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.
 38. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 ET SEQ.

39. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
 40. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
 41. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

1 COUNT II

2 ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

3 CAL. CIV. CODE §§ 1788-1788.32

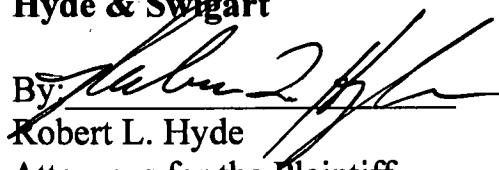
- 4 42. An award of actual damages pursuant to California Civil Code § 1788.30(a);
5 43. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §
6 1788.30(b);
7 44. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal.
8 Civ. Code § 1788.30(c).

9 TRIAL BY JURY

- 10 45. Pursuant to the seventh amendment to the Constitution of the United States of
11 America, Plaintiff is entitled to, and demands, a trial by jury.

12 Date: 12/2/08

13 Hyde & Swigart

14 By: 

15 Robert L. Hyde
16 Attorneys for the Plaintiff

HYDE & SWIGART
San Diego, California

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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Erica Welker

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

Law Office of Daniel J. Johnson

08 DEC -5 PM 12:26

County of Residence of First Listed Defendant COUNTY OF SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

BY:

Attorneys (If Known)

DEPUTY

08 CV 2259 MMA WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | <input type="checkbox"/> PTF 1 | <input type="checkbox"/> DEF 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> PTF 4 | <input type="checkbox"/> DEF 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
				PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
				SOCIAL SECURITY <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp'l. Ret. Inc. Security Act
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habens Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|----------------------------|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 |
|---|---|--|---|--|---|----------------------------|

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1692 et seq.

VI. CAUSE OF ACTION

Brief description of cause:
FDCPA

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND \$ \$75,000CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 12/1/08 SIGNATURE OF ATTORNEY-OF-RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # 157787 AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

JAC 12/5/08Cl

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

157787 - TC

**December 05, 2008
12:37:42**

Civ Fil Non-Pris
USAO #: 08CV2258
Amount.: \$350.00 CK
Check#: 2725

Total-> \$350.00

FROM: WELKER VS HORWITZ